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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/641,142	08/15/2003	Steven Shraga	P23568	8544
7055	7590	12/31/2008		
GREENBLUM & BERNSTEIN, P.L.C.			EXAMINER	
1950 ROLAND CLARKE PLACE			NGUYEN, TUAN VAN	
RESTON, VA 20191				
			ART UNIT	PAPER NUMBER
			3731	
			NOTIFICATION DATE	DELIVERY MODE
			12/31/2008	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com  
pto@gbpatent.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/641,142	SHRAGA, STEVEN
	<b>Examiner</b>	<b>Art Unit</b>
	TUAN V. NGUYEN	3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 18 April 2008.

2a) This action is **FINAL**.                                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-14, 17-33 and 35-48 is/are pending in the application.

4a) Of the above claim(s) 4-7 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-3, 8-14, 17-33 and 35-48 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4/18/08.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114 after Board Decision but Before  
Further Appeal or Civil Action***

1. A request for continued examination under 37 CFR 1.114, was filed in this application after a decision by the Board of Patent Appeals and Interferences, but before the filing of a Notice of Appeal to the Court of Appeals for the Federal Circuit or the commencement of a civil action. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on April 18, 2008 has been entered.

***Response to Amendment***

2. Applicant's arguments filed on April 18, 2008 with respect to claims 1-3, 8-14, 17-33, and 35-42 have been fully considered but they are not persuasive.
3. Claim 1 has been amended to include limitation of "movably mounted to the body" from claim 15, has been canceled by the amendment, and the limitation of "removably mounted to the body" from claim 16, has been canceled by the amendment. Noting that claims 1-3 and 8-44 were appealed on June 11, 2006 and the rejection of claims 1-3 and 8-44 have been affirmed by decision of the Board of

Patent Appeal and Interference on April 1, 2008. Therefore, claims 1-3 8-14, 17-33 and 35-44 stand rejected.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action
  - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
  1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
6. **Claims 1-3, 8-14, 17-33 and 35-42 stand rejected according to the decision of the Board of Patent Appeal and Interference on April 1, 2008 mailed on April 1, 2008.**
7. **Claims 43-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levin et al (U.S. Re 32,922) in view of Slama (US 4,469,110).**

8. Levin discloses (Figs. 3 and 4) body 47, trigger 55, trigger spring 21, front cover 15, holding member 29, first spring 37, second spring 45, second stop surface (opposite of surface 17), and first stop surface 23. Levin discloses the invention substantially as claimed except for the lat least partial rotation of the front cover causes the skin engaging end to move axially relative to the second stop surface. However, Slama discloses the front cover 10 of a lancet device should be designed for at least partial rotation of the front cover causes the skin engaging end to move axially relative to the second stop surface 7 to adjust the depth of the penetration (col. 3, lines 49-58). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the front cover as disclosed by Slama into the device, as disclosed by Levin so that it too would have the same advantage.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan V. Nguyen whose telephone number is 571-272-5962. The examiner can normally be reached on M-F: 9:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on 571-272-4173. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/T. V. N./

Examiner, Art Unit 3731

/Todd E Manahan/

Supervisory Patent Examiner, Art Unit 3731